

12  
Court 1 Petitions  
Mem No. 302.

Presented on 22/3/19

Recd on - 22/3/19

**BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM**

**W.P.(C) No. 35064 of 2018**

Wayanad Prakrithi Samrakshana Samithi : Petitioner

**Vs.**

State of Kerala & others : Respondents

**COUNTER AFFIDAVIT FILED ON BEHALF OF THE FIRST  
RESPONDENT**

copy to:  
Sri. M. P. Prakash  
Advocate,  
High court of Kerala

Recd  
C/o M. P. Prakash  
22/3/19

Para 11

**SANDESH RAJA K**  
SPECIAL GOVERNMENT PLEADER (FORESTS)

BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM

W.P.(C) No. 35064 of 2018

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

State of Kerala & others : Respondents

**INDEX**

Sl.No.	Particulars	Page No.
1.	Counter Affidavit filed on behalf of the first respondent	1 - 11
2.	<b><u>Exhibit R1(a)</u></b> . True copy of the the letter No-22-8/2000 JFM (FPD) dated 21.2.2000	12 - 15
3.	<b><u>Exhibit R1(b)</u></b> . True copy of the GO(Rt.)429/2001 /Forest dated 15.10.2001 with English translation	16 - 16(a)
4.	<b><u>Exhibit R1(c)</u></b> . True copy of the letter no E&TW3-53128/2017 dated 10.11.2017	- 17 -
5.	<b><u>Exhibit R1(d)</u></b> : True copy of relevant extract of Chapter IV of the working plan submitted to the Government of India.	18 - 27

Dated this the 22<sup>nd</sup> day of March, 2019.

  
**SANDESH RAJA K**  
SPECIAL GOVERNMENT PLEADER (FORESTS)

**BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM**

**W.P.(C) No. 35064 of 2018**

Wayanad Prakrithi Samrakshana Samithi : Petitioner

**Vs.**

State of Kerala & others : Respondents

**COUNTER AFFIDAVIT FILED ON BEHALF OF THE FIRST  
RESPONDENT**

I, Padma Mahanti , D/o.Shri.Ambika Prasad Mahanti, aged 42 years, residing at Thiruvananthapuram, now at Ernakulam, do hereby solemnly affirm and state as follows:

1. I am working as the Chief Conservator of Forests (E&TW), Forest Headquarters, Thiruvananthapuram. I am duly authorised by the 1<sup>st</sup> respondent to file counter affidavit. I am conversant with the facts of the case as disclosed from the files relating thereto. All the allegations and averments made in the writ petition except those which are specifically admitted hereunder are denied.

2. It is submitted that the above writ petition is filed inter-alia for the issuance of a Writ of Certiorari quashing Exhibit P10 and Exhibit P11 proceedings orders issued increasing the daily number of visitors to Kuruva Island situated within Chedleth Forest Range of South Wayanad Forest Division and also for a direction restraining the State Government from carrying on Eco-tourism in reserve forests, without getting prior approval of the Management Plan/ Working Plan under Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as Act, 1980) and engaging persons other than forest dependent community. The Writ Petition proceeds on a presumption that Eco-tourism is a non-forest activity. The said contention is absolutely incorrect as specified under section 2(ii) of Forest (Conservation) Act 1980. Under section 2 of the Act, 1980, the restriction imposed is only on the de-reservation of forests or use of forest land for non-forest purpose. The definition of non forest purpose is also specifically given in the act and the same is reproduced below;

"For the purpose of this section 'non forest purpose' means the breaking up or clearing of any forest land or portion thereof for:-

*Padma Mahanti*

1. The cultivation of tea, coffee, spices, rubber, palms, oils bearing plants, horticulture crops or medicinal plants.
2. Any purpose other than re-forestation but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely the establishment of check post, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes".

3. It is submitted that as part of management of forest visits to places of national beauty is being carried out mainly for creation of awareness to visitors and generating gainful employment to the forest dependent communities including the poor tribes of the area through Vana Samrakshana Samithies (VSS) under the Participatory Forest Management programme (PFM) as per the guidelines issued by the Ministry of Environment, Forest Government of India. Vana Sanmakshana Samithies are committees under Participatory Forest Management involving local public in the protection and conservation of forests including stake holders of a particular patch of forest. The visitation to Kuruva is managed by the VSS with an objective of increasing nature awareness among general public and to make the area free from ecological degradation and pollution and for generating employment which are included in the 'other like purposes' in Explanation (b) of sub section to section 2 of the Act, 1980. Ecotourism is not defined in the Forest (Conservation) Act and as such it is not Forestry/ non-forestry activity. It is actually dependent on what is actually carried out in the name of ecotourism. What is done in Kuruva is day time restricted visitation. No construction of any sort is involved. As such the contention that it is a non-forestry activity is not supported by facts. It is also submitted that there is no permanent structures erected by breaking up and clearing of any forest land in the visitation area of Kuruva Island. It is also stated that there is no provision in the Forest (Conservation) Act 1980 prohibiting visitation to the reserve forest. Kerala Forest Act, 1961 prohibits only the unauthorised entry into the forest which is not attracted in this case. Hence the Writ petition is not based on any valid ground.

4. Regarding the averments in paragraph 3 of the writ petition, it is submitted that Visitation to the forest areas in the State is implemented as part of Participatory Forest Management (PFM) with twin objectives of conservation

Padma Mahanti'

who allowed PFM?

9

<

of forests through people's participation and betterment of local forest dependent communities by generating employment through PFM Programmes. The management of the visitation is done by the local Vana Samrakshana Samithi / Eco Development Committee, which are committees formed with local forest dependent people as its members. Each such activity of the visitation is designed and incorporated after proper planning by the managing VSS/ EDC and is included in the Microplan of the concerned VSS/ EDC. It is submitted that regulated visitation to forest areas is a part of conservation activity and is mainly meant for improving the livelihood of the local forest dependent people by generating employment. It is submitted that Exhibit P10 and P11 are pertaining to the fixation of the number of visitors to Kuruva Island which comes within the jurisdiction of the respective officers who have issued those orders.

5. Regarding the averments in paragraph 4 of the writ petition, it is submitted that Kuruva Island is one of the frequently visited destination in Wayanad district and has now become over crowded. Due to the increase of visitors, anthropogenic pressure on this forest eco-system is increasing and it necessitates regulation of the inflow of visitors. Regulating the visitation to this site was started by the Forest Department during 2004, under the PFM Programme as per the guide lines issued by the Ministry of Environment & Forest, Government of India vide letter No-22-8/2000 JFM (FPD) dated 21.2.2000. True copy of the letter No-22-8/2000 JFM (FPD) dated 21.2.2000 is produced herewith and marked as **Exhibit R1(a)**. It is submitted that this visitation point is being managed and supervised through VSS under South Wayanad Forest Development Agency as per the GO(Rt.)429/2001 /Forest dated 15.10.2001 by the Forest and Wildlife (F) Department and as per the accepted formula. A true copy of the Government Order dated 15.10.2001 is produced herewith and marked as **Exhibit R1(b)**. VSSs are committees formed under PFM involving local public in the protection and conservation of forests including stake holders of a particular patch of forest. VSSs were established for the effective management of these sites by involving local people on a benefit sharing mechanism built on the platform of Pollutor to Pay" principle.

6. Regarding the averments in para 5 of the writ petition, it is submitted that the Kuruva Island consists of 146.01 ha of Reserve Forests out of which visitation is restricted to approximately in 0.539 ha area only. The Pakkom-Kuruva VSS under the South Wayanad Forest Development Agency is conducting the visitation programme in the area. At present there are two entry

Padme Mahanti

Focus for development of forest dependent communities & generate employment for them  
F.R.D. Dept.

P.F.M. Programme  
Tourism - 2004

points to the Kuruva Island. One is at Palvelicham managed by District Tourism Promotion Council (DTPC), Wayanad functioning under the control of 5th respondent and the other at Pakkom managed by the Pakkom-Kuruva VSS consisting of local people, mainly schedule tribals. The VSS was formed during the year 2002 mainly for improving the livelihood of the local tribes by generating employment. During 2004, the Forest Department permitted the DTPC to start an entry point at the river bank of Kabani, adjoining to Kuruva Island. Later on, the DTPC has managed to acquire river bank on the periphery of Kuruva Island at Palvelicham from the Panchayath authorities and established ticket counter, amenity Centre and lodging facility. They have engaged tourism guides and started rafting in Kabani River for the tourists into Kuruva Island. Subsequently, this area on Palveicham side is developed into a tourism centre with the establishment of new hotels, restaurants etc. on the various farm lands. Most of the visitors to this point are general tourists and for them visit to the island is only one of the several activities. As such their visitation need to be oriented to the ecological sensitivity of Kuruva Island before they are allowed entry to the island. The visitation at Pakkom is managed by the members of Pakkom-Kuruva VSS and the fee collected from visitors is used to pay remuneration to the guides engaged, who are the members of the VSS.

7. Regarding the averments in para 6 of the writ petition, it is submitted that the contention that the Department of Forest, which is establishing ecotourism sites across Kerala, has not achieved the required conservation of ecosystem and sustainable development of local community is not true. Wherever visitation into the forest area is in place, those areas are kept neat and clean by the local community and is managed well and thousands of people who were depending on forest for their livelihood are earning their daily bread by the remuneration received from the ecotourism points where their services are utilized as guides, keepers, watchers etc. When the Department felt that the number of visitors is to be regulated for better protection of the site, the Forest Department have started conducting the carrying capacity assessment. The assessment of carrying capacity is being done on a priority basis, first for 30 sites where the number of visitors is more. Kuruva is the first in the priority list and the study is entrusted to the Institute of Forest Genetics and Tree Breeding, Coimbatore (IFGTB), nationally reputed institution under the Government of India. The report is received and the same is under consideration of the Department. The circumstances which led to the issuance of Exhibit P 10 and P11 are as stated hereunder. Based on the complaints

Padme Mahanti

who allow DTPC-9

2

received from public and based on the report of Divisional Forest Officer, South Wayanad Forest Division, the Additional Principal Chief Conservator of Forests (E&TW) had restricted the daily number of visitors to Kuruva island as 400 per day as per letter no E&TW3-53128/2017 dated 10.11.2017. True copy of the letter dated 10.11.2017 is produced herewith and marked as **Exhibit R1(c)**. On the basis of Annexure R1(c) the number of visitors to Kuruva Island was fixed as 400 per day till the month of May 2018. By then it came to the Department's notice that there was a difference in the reporting of the area used by the tourists and the total staff strength of Chedalet Range, and based on the aforesaid facts, the said carrying capacity was revised by using the actual area and the correction factor applied for availability of staff: The carrying capacity was thus recalculated using the same formula that was applied and it was found to be 998 numbers. The Additional Principal Chief Conservator of Forests (E&TW) had accordingly decided to temporarily restrict the number of visitors to 950 per day, based on the parameters laid down by Government of India and based on objective data as evidenced by Exhibit P10. This figure of 950 was arrived at on a calculation of the carrying capacity with help of the exiting formula used for assessing the carrying capacity in tourism areas. The area of the footpath used by visitors only was taken as the available area for the calculation of the physical carrying capacity study. But the actual area used by visitors in Kuruva includes in addition to the above area, which includes the river bank and three small islets which comes to 2540m<sup>2</sup>. Hence the total area used by visitors comes to (2850 m<sup>2</sup>+2540m<sup>2</sup>) 5390m<sup>2</sup>. The correction factor applied for availability of staff as 0.765 was also not correct as this was based on the total staff strength of Chedleth Range. As the entire staffs of Chedleth Range is not engaged in managing the site at Kuruva, the correction factor for staff availability has to be 1.00, which is based on the staff actually involved in managing the site. If it is recalculated, the real carrying capacity with the help of the above said formula was found to be 998. Based on the parameters laid down by the Government of India and on the basis of objective data and on the exiting formula used for assessing the carrying capacity in tourism areas, the daily number of visitors has been increased to 950 per day temporarily as per Exhibit P10.

In Comment

8. It is submitted that the ecotourism guidelines said to have been issued by the Ministry of Environment and Forests (MoEF) marked as Exhibit P1 in the petition is only a draft guidelines issued for Protected Areas (Sanctuaries

Padma Mahanti

and National Parks, etc.) and not for the other forest areas. Majority of the present sites including Kuruva are outside protected areas. The Protected Areas always have a Management Plan in which the tourism activities in the area are well defined in the plan. Against the limitation imposed on entry of visitors fixed at 950 per day, there was an agitation and protest lead by the MLA's representing Kalpetta and Mananthavady Constituencies and the District Collector Wayanad submitted a report dated 09.05.2018 recommending to increase the number of visitors to Kuruva in view of increased visitor arrivals. The matter was considered carefully and after discussions and consultation, the Principal Secretary issued Exhibit P 11 order permitting the Divisional Forest Officer to increase the entry of visitors, if necessary, subject to local factors, up to an additional 100 persons a day and as a purely temporary arrangement which was to be continued only till the area was closed down for the monsoon season and the entry will be restricted to the level of carrying capacity arrived at through the comprehensive study. Visit to Kuruva Island remain dosed from June onwards of every year following the advent of south-west monsoon. The temporary enhancement of number of visitor by an additional 100 persons per day for a few days was a purely temporary measure and its validity expired on 31-05-2018. The number of visitors to the island is once again restricted to 950 and this will be reviewed when the final report of the carrying capacity study currently in progress is concluded. After monsoon season, the visitations have been opened on 30.11.2018 and the number of visitors has been limited to 950 numbers per day, as per Exhibit P10.

സുരക്ഷിതമാക്കിയിട്ടില്ലാത്ത  
 2. അനുബന്ധം

9. Regarding the averments in para 10 of the writ petition, it is submitted Forest Department has commissioned a further study on carrying capacity for the site by the Institute of Forest Genetics and Tree Breeding (IFGTB), Coimbatore, Tamil Nadu, a Government of India organisation. The study is expected to be completed within a short while. The guideline mentioned in para 10 of the petition as Exhibit P4 is the one which was prepared and submitted to the 2nd respondent by the Additional Principal Chief Conservator of Forests (E&TW) for approval. Government on examining it found not suitable and has returned it with a direction to revise it and the Chief Conservator of Forests (E&TW) has revised it with major modifications and submitted to Government on 01-10-2018. The same is under the consideration of the 2<sup>nd</sup> respondent. However, the administrative sanction for conducting carrying capacity studies in 25 ecotourism sites have been given and funds for it is made

*Padma Yashanti*

available from the Ecotourism Department. The Kerala Forest Department shall conduct carrying capacity study for all the ecotourism sites presently in operation and based on the findings/ recommendations of the study, the inflow of the tourists will be regulated.

12  
20/05/20

10. Regarding the averments in para 11 of the writ petition, it is submitted that as regard the prayer for prohibiting Eco-tourism activities conducted without obtaining the prior approval of the Central Government under the Forest Conservation Act 1980, it is submitted that the programme of Eco-tourism under the Forest Development Agency is what is envisaged in the National Forest Policy 1988 and is mainly meant for peoples involvement, protection and management of forests and for improving the livelihood of the local people especially, the Schedule Tribes, by generating employment. It is submitted that Exhibit P1 is the draft guidelines of Eco-tourism in and around protected areas. As this area does not come within the category of protected areas this guidelines is not directly applicable to this area. It is also submitted that no non-forestry activities have been carried out in Kuruva as specified under Section 2(ii) of Forest (Conservation) Act, 1980. The Forest Department had opened day visitation at Kuruva to enable the general public to enjoy the pristine natural beauty of the Kuruva Island and for generating employment to poor robes of the area and to ensure a waste free environment in the forest by levying an appropriate amount from the tourist as user fee by the VSS.

Protected area  
Writ petition  
20/05/20

11. Regarding the averments in para 11 of the writ petition, it is submitted that the Government of India, Ministry of Environment and Forests has approved the Working Plan of South Wayanad Forest Division for the period 2012-21 except Chapter IV on Ecotourism. True copy of the relevant extract of Chapter IV of the working plan submitted to the Government of India is produced herewith and marked as **Exhibit R1(d)**. It may be seen that this Chapter explains the background of the PFM within the division, the details of VSSs which are functional and also the prescriptions for the ecotourism activities which were proposed under Para 4.2 Ecotourism (wrongly numbered as 5.2 in document). Under Sub Para 4.2.5 the following are the prescriptions for Ecotourism.

16

1. To conduct a carrying capacity study of the ecotourism centre and limit the visitors accordingly.

Padma Mahanti

2. Develop a website for each eco-tourism centre and start online booking. The website should be updated regularly.
3. Establish computer ticket counter in all ecotourism centers.
4. Give regular training to the guides appointed by each VSS.
5. Fine may be imposed for depositing plastic waste in the ecotourism centre. Warning boards be erected against all waste deposition.
6. Provide visitor amenities in all ecotourism centers and trekking areas.
7. Establish a nursery of forests trees and medicinal plants under each VSS and open a sales outlet of seedlings.
8. Produce and sell unique caps and T-shirts etc. as mementos.
9. Maintain the pathways, toilet, ticket counter etc. and ensure that the ecotourism center is neat and clean.
10. Prohibit bathing in the lake at Chembra peak and ensure adequate guides are available every day.
11. Establish a natural history museum and interpretation centre in all ecotourism points.
12. One more ecotourism centre is to be proposed at Kanthanpara in Badery Section of Meppady Range.

A perusal of the same would make it sufficiently clear that none of the above prescriptions except the one at Serial Number 12 may have any negative impact on the proper management of the forests. The Hon'ble Court may kindly find this prescription to be in order and order accordingly.

12. Regarding the averments in para 13 of the writ petition, it is submitted that eco tourism per se is neither forestry nor a non-forestry activity. The activities actually undertaken within the ambit of ecotourism will decide whether it is a forestry or non-forestry activity. The activity carried out in Kuruva islands under the name of ecotourism is day time visitation only. Day time visitation to Kuruva was going on for past several decades and it was not introduced as part of the current working plan (2012-21). Though good number of people were visiting the island and appreciating its beauty, over a period of time the number has increased and there was a felt need that such day time visitation should not cause irreparable damage to the ecosystem. To achieve this objective, the visitation was regulated, tickets were introduced and this revenue was used for cleaning the garbage, upkeep of the site and for the eco-development activities and conservation of the forests through the local community and there by contributing to their welfare. Government of India as

*Padma Mohanti*

കുറുവാ ദ്വീപുകളിൽ (കുറുവാ ദ്വീപുകളിൽ) സന്ദർശനം.

part of the National Forest Policy 1988 had introduced participatory forest management, so that the forest dependent communities contribute and at the same time benefit from the conservation efforts. The models for participatory forest management developed in other states (like West Bengal, Madhya Pradesh etc.) depended on sharing of the benefits from protecting the forests. The major source of revenue for such joint forest management models were the revenue from harvesting of small timber, grass and other non-wood forest produce. At a later date, ecotourism was introduced in Tiger Reserves and some protected areas and this included visits, mostly in motor vehicles and also overnight halts. Government of Kerala was one of the pioneers in the country in banning tree felling, banning conversion of natural forests as plantations as well as stopping selection felling in natural forests. As such no trees are harvested from the natural forests of Kerala. Demonstrating highest levels of sensitivity to the need for protection of natural forests, the State Government has decided to convert the forest plantations for industrial raw materials, back to the natural forests and this process has already begun. While taking all efforts to conserve the natural forests of the State, the Department is also aware of the fact that the forests and people cannot be and need not be separated to water tight compartments except to the peril of both. The Department has thus taken a conscious stand to open to the public, places of natural beauty within the forests in a regulated way so that the visitors go back with a better appreciation of the need for conserving forests and at the same time the members of the local community derive gainful employment at their doorstep which will further motivate them to properly protect the forests. Such forest visitation is conceptualized as a tool for interpretation and imparting nature education to visitors. The ecotourism model, i.e., day time visitation implemented in Kerala through the VSS is a win-win model and benefit to all the stakeholders. To ensure its sustainability, all visitations are to be routed through VSS and every such visitor should be given a formal exposure to the conservation aspects of forests. Having done away with the conversion of natural forests to plantations, stopping even selection felling, starting reversion of plantation to natural forests, this is the only viable option to gainfully employ the forest dependent local population into the conservation of forests that is workable in Kerala. Any contentions to the contrary are without appreciating the interdependence of forests and their fringe area population and therefore have to be rejected.

*Pradine Mahenth*

13. Regarding the averments in para 14 of the writ petition, it is submitted that the day visitation in Kuruva is conducted by the Pakkam-Kuruva VSS and the service charge collected from the visitors is coming to the Ecosystem Management Fund of South Wayanad Forest Development Agency. DTPC is issuing entry tickets in one of the two entry points to Kuruva for which they have engaged some local staff. Visitation in Kuruva is only for about six months in a year when the Island is free from flood waters.

13. Regarding the averments in para 17 of the writ petition, the number of visitors allowed now on a daily basis is based on the adhoc carrying capacity calculated as per the formula. of National Tiger Conservation Authority (NTCA) which will be revised and re-fixed after completion of the present carrying capacity study and acceptance of the report of IFGTB by the Department.

14. Regarding the averments in para 18 of the writ petition, day visitation in the forest areas of Kerala Forest Department is only done under PFM model and not in any other manner. It is submitted that based on the study report pertaining to carrying capacity, the inflow of the tourist will be regulated.

15. Regarding the averments in Ground A, it is submitted that Exhibit P10 and P11 are issued as a temporary arrangement based on the calculation of carrying capacity with the help of the formula of NTCA for calculation of carrying capacity in tourism areas. Once the carrying capacity study is completed and the report accepted, the number of visitors will be regulated based on it. Further the validity of P 11 has already expired. P 10 is based on the same principle based on which the carrying capacity was wrongly decided as 400 per day and it has effected only factual corrections.

16. Regarding the averments in Ground B, it is submitted that Exhibit PI Guidelines is the draft guideline for protected areas and is not as such applicable to other forest areas. However, the formation of State Level Ecotourism Guideline is under the consideration of Government of Kerala and will be decided without further delay. 18. Regarding the averments in Ground C, it is submitted that the day time visitation to Kuruva Island is not a non-forestry activity restricted by Forest (Conservation) Act. The applicability of Forest (Conservation) Act, Kerala Forest Act and approval of the Working Plan of South Wayanad Forest Division have been explained clearly in the

*Padma Mohan*

*Temporary arrangement  
Carrying Capacity Study  
Tourism Department*

paragraphs above and hence Exhibit P10 shall have to be in force till the carrying capacity exercise is completed and put in place.

17. Regarding the averments in Ground D, it is submitted that applicability of Forest (Conservation) Act, Kerala Forest Act and approval of the Working Plan of South Wayanad Forest Division have been explained clearly in the pass above and hence Exhibit P10 shall have to be in force till the carrying capacity exercise is completed and put in place.

19. Regarding the averments in Ground E, it is submitted that P4 guidelines was only a draft submitted to Government which has since been returned to the Forest Department. The revised guidelines are under the consideration of Government. Carrying capacity study in the major visitation points, 30 numbers priority basis, are in progress which will be completed within a reasonable time. Calculation of carrying capacity is a skill in which the forest officers should acquire. Therefore the carrying capacity study in a few sites will be carried out through external agencies and in the process the Department staff will be able to acquire the skill. Such studies for the remaining sites will be carried out by the Department officers who gained such experience.

Under the above circumstances, it is most humbly submitted that the grounds raised in the above Writ Petition are devoid of any force or merit. Hence the above Writ Petition is liable to be dismissed with costs.

Hence it is respectfully submitted that the writ petition may be dismissed with costs to this respondent.

Dated this the 21<sup>st</sup> day of March, 2019.

*Padma Mahanti*  
21/3/19

**DEPONENT**

Solemnly affirmed and signed before me by the deponent whom I know on this the 21<sup>st</sup> day of March, 2019 at the Office of the Advocate General, Ernakulam.

*[Signature]*

**SANDESH RAJA K**  
SPECIAL GOVERNMENT PLEADER (FORESTS)

# BEFORE THE HON'BLE HIGH COURT OF KERALA

W.P (C) No.

of 2019

: PETITIONER

*Versus*

UNION OF INDIA & ORS

: RESPONDENTS

## INDEX

Sl No.	Particulars	Page No.
1.	Synopsis	
2.	Writ Petition (civil)	
3.	Affidavit	
4.	<b>Exhibit P1:</b> A true photocopy of the list of eco-tourism sites as identified by the Kerala Forest Department	
5.	<b>Exhibit P2:</b> True photographs of waste being dumped, illegal construction and felling of trees under the garb of eco-tourism in various sites such as Pakkom Kuruva, Kallar, Kakkayam Waterfalls, Tusharagiri, Muthanga, Tholpety, Aralam, etc	
6.	<b>Exhibit P3:</b> A true photocopy of the newspaper article dated 03.09.2018 in India Times about plastic waste during the floods and photographs	
7.	<b>Exhibit P4:</b> A true photocopy of the note sheets summarizing comments on the Guidelines from various officers obtained by the petitioner under RTI	
8.	<b>Exhibit P5:</b> A true copy of the above Guidelines prepared by the Kerala Forest Department	
9.	<b>Exhibit P6:</b> A true photocopy of letter No. E&TW3-18256/16 dated 31.07.2018 issued from the office of the Additional Principal Chief Conservator of Forests (E&TW)	
10.	<b>Exhibit P7:</b> A true photocopy of the relevant portion of the Working Plan for South Wayanad Forest Division	
11.	<b>Exhibit P8:</b> A true photocopy of the letter from the MoEF&CC to the Government of Kerala dated 13.11.2012	
12.	<b>Exhibit P9:</b> A true photocopy of the relevant pages of Himachal Pradesh's eco-tourism policy	

Dated this the 3<sup>rd</sup> day of January, 2019

COUNSEL FOR THE PETITIONER

# BEFORE THE HON'BLE HIGH COURT OF KERALA

W.P (C) No.

of 2019

WAYANAD PRAKRITHI SAMRAKSHANA  
SAMITHI

: PETITIONER

*Versus*

UNION OF INDIA & ORS

: RESPONDENTS

## SYNOPSIS

1. The present writ petition is filed by the petitioner organization in public interest with the intention of protecting our forests and ecology from the significant negative impacts of unchecked and unregulated eco-tourism in the State of Kerala.
2. The petitioner wishes to bring to the notice of this Hon'ble Court that the State of Kerala has about 60 designated eco-tourism sites, as evidenced in Exhibit P1, which are being utilized without any regulation and are dealing with a footfall each day that is manifold the actual carrying capacity of these forests. As a result, the fragile forests in Kerala which are often habitats and corridors for wildlife, are facing the brunt of unchecked tourism.
3. Eco-tourism is meant to be low-impact tourism with great socio-economic benefit to the local residents. Such low-impact tourism comes with control on the footfall after studying the carrying capacity of these eco-tourism sites, which has not been done in this case. Unfortunately, large scale tourism is taking place in these sites under the garb of eco-tourism.
4. The Kerala Forest Department has drafted Exhibit P5 "Guidelines for Eco-tourism in Forest and Wildlife Areas" in October 2017 but the 3<sup>rd</sup> and 4<sup>th</sup> respondents have been sitting on the same and dragging the matter to infinity for the past one year without implementing the guidelines. The reasons for the delay in implementation of Exhibit P5 is best known to 3<sup>rd</sup> respondent. It is now learnt by the petitioner that the 4<sup>th</sup> respondent has issued Exhibit P6 communication withdrawing implementation of Exhibit P5, leaving a void in the regulation of eco-tourism in the State. This is highly damaging to forests and wildlife, and will encourage economic tourism under the garb of eco-tourism. Further we understand as per documents received in RTI that the

State is in the process of diluting the 2017 guidelines and replacing them with guidelines that will not be able to address issues of destructive commercial tourism being practiced in the guise of "Ecotourism", which have now been submitted for final approval to the 2<sup>nd</sup> Respondent.

5. Furthermore, the petitioner also wishes to bring to light the fact that several of the eco-tourism sites are functioning without prior Forest Clearance under Section 2 of the Forest (Conservation) Act, 1980 despite it being a non-forest activity.
6. The petitioner-Society seeks a direction for issuance of the Guidelines for Eco-tourism in Forest and Wildlife Areas as well as ensure that no eco-tourism site are operated without obtaining prior sanction from the Central Government.
7. Hence the petitioner most humbly submits this Writ Petition (civil) under Article 226 of the Constitution of India.

Dated this the 3<sup>rd</sup> day of January, 2019

COUNSEL FOR THE PETITIONER

# BEFORE THE HON'BLE HIGH COURT OF KERALA

W.P (C) No.

of 2019

## PETITIONER:

*Versus*

## RESPONDENTS:

1. Union of India, represented by its Secretary, Ministry of Environment, Forest and Climate Change, Paryavaran Bhavan, Lodhi Road, New Delhi 110 003.
2. State of Kerala, represented by the Principal Secretary, Department of Forest and Wildlife, Secretariat, Thiruvananthapuram - 695 001.
3. The Principal Chief Conservator of Forest and Head of Forest Force, Department of Forests and Wildlife, Secretariat, Thiruvananthapuram 695 001.
4. Additional Principal Chief Conservator of Forests, Eco-Development and Tribal Welfare, Forest Head Quarters, Thiruvananthapuram, Kerala - 695033.
5. State Board for Wildlife, represented by its Member Secretary, Chief Wildlife Warden, Forest Headquarters, Thiruvananthapuram, Kerala - 695033.
6. Standing Committee, National Board for Wildlife, Paryavaran Bhavan, Lodhi Road, New Delhi 110 003.

## WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Address for service of all process to the petitioner is that of his counsel **RAJAN VISHNURAJ & HARISH VASUDEVAN**, Advocates **AMICUS ADVOCATES**, II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi - 18 and address for service of all process/notice to the Respondents are as shown above.

### STATEMENT OF FACTS

1. The petitioner herein is.....
2. The petitioner society is filing the present writ petition in public interest with the intention of protecting the forests and wildlife of Kerala from the unregulated and unchecked tourism, which is often done under the garb of "eco-

tourism". The petitioner submits that the very essence of the concept of eco-tourism is lost when such activities go unregulated. Thus, it is in this regard the petitioner is approaching this Hon'ble Court to seek its intervention in regulating such activities and conserving Kerala's pristine wild spaces.

3. It is respectfully submitted that the State of Kerala has rapidly become one of the most sought-after tourist destinations in the world for its natural heritage and cultural richness. The stunning sand beaches, palm fringed backwaters, moderate climate, mist clad hill stations, tropical forest, abundant wildlife, diverse art forms and festivals give Kerala a certain charm in the traveller's eyes. The strength of tourism in Kerala fully depends on its natural attributes like forests, hill stations, rivers, backwaters and beaches. Hence it is essential to bring forth sustainable initiatives towards conservation without inhibiting tourism activities.
  
4. It is respectfully submitted that Kerala has about 60 eco-tourism destinations across the State that are run by the Forest Department. It is submitted that the term "eco-tourism" is defined by the International Union for Conservation of Nature (*hereinafter referred to as IUCN*) as "environmentally responsible travel and visitation to relatively undisturbed areas, in order to enjoy and appreciate nature, that promotes conservation, has low negative visitor impact, and provides for beneficially active socio-economic involvement of local people." Going by the above mentioned definition by the IUCN, it is seen that Eco-tourism means leaving minimal impacts on the areas visited by the tourists. It therefore means not leaving behind any plastics or non-biodegradable material, minimizing noise pollution, no smoking or drinking inside the forest, not lighting fires, etc. However, it has been seen that in various eco-tourism sites across the State are operating with a footfall of over 1000 persons everyday who cause large damage to the forests. Heaps of plastic and other non-biodegradable waste which are often consumed by animals, noise which causes great disturbance to animals, construction within forests and Protected Areas, etc. stand in complete contradiction to the concept of eco-tourism. A true photocopy of the list of eco-tourism sites as identified by the Kerala Forest Department is produced herewith and marked as **Exhibit P1**.
  
5. It is respectfully submitted that the number of tourists traversing in the fragile forests have caused significant soil erosion which is a large factor for flooding in

the State. Considering that Kerala has amongst the largest floating population of tourists, a significant chunk of the waste is generated by this sort of irresponsible tourism. Currently, there is no way to control the entry of plastic into these forests and this is the need of the hour to avert pollution, consumption of these discarded wastes by animals and destruction of their natural habitat. The petitioner has come across the dumping of waste in the name of eco-tourism in various parts of the State through the visual and print media. True photographs of waste being dumped, illegal construction and felling of trees under the garb of eco-tourism in various sites such as Pakkom Kuruva, Kallar, Kakkayam Waterfalls, Tusharagiri, Muthanga, Tholpety, Aralam, etc. are annexed herewith as **Exhibit P2**. A true photocopy of the newspaper article dated 03.09.2018 in India Times about plastic waste during the floods and photographs evidencing the same are annexed herewith as **Exhibit P3**.

6. It is respectfully submitted that the petitioner has applied for documents under the Right to Information Act, 2005 pertaining to the Eco Tourism Guidelines in the State of Kerala before the 2<sup>nd</sup> respondent. In the said documents obtained from the Forest Department under RTI paint a worrisome picture of how eco-tourism sites are being managed, where waste is burnt, plastic is dumped in the forests, etc. These documents also go on to state that around 10 crore rupees were spent over two years on construction and repair of infrastructure for eco-tourism alone, showing the extent of damage being caused by unregulated "eco-tourism". Expenditure of around 10 Crore rupees on construction of permanent structures without obtaining prior permission from the 1<sup>st</sup> Respondent, and in violation of the Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980 can in no way be justified as "eco-tourism". Furthermore, such activities are taking place without studying the carrying capacity of the forest which can be detrimental to the health of these forests, which support several Schedule-I species including elephants, leopards, etc. As per the reliable knowledge of the petitioner, these sites mentioned in Exhibit P1 do not also have the statutory clearances as mandated under the Forest (Conservation) Act, 1980. It is also very clear in the letter sent by the Chief Conservator (Central) of the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent that no construction activity shall be started or renovated in forest land without obtaining prior permission from the Central Government. A true photocopy of the note sheets summarizing comments on the Guidelines from various officers obtained by the petitioner under RTI is annexed herewith as **Exhibit P4**. True photocopy of the letter

dated 15.07.2009 issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent is produced herewith and marked as **Exhibit P4(a)**.

7. It is respectfully submitted by the petitioner that the 60 eco-tourism sites in various parts of Kerala are unregulated and do not keep to the values that eco-tourism stands for. Eco-tourism is a tourism program that is nature-based, ecologically sustainable, where education and interpretation is a major constituent and where local people are benefited. It is also a model of tourism where the visitors have an enhanced experience as they visit a less disturbed forest area and take back learnings from their visit to these sites, thus bettering the experience given to them. According to the Draft Guidelines on eco-tourism as issued by 4<sup>th</sup> respondent in 2011:

"eco-tourism is low impact, educational, and conserves the environment while directly benefiting the economic development of the local communities. Most wilderness areas across India are fragile ecosystems that provide a whole host of ecosystem services to local residents and people living downstream; and continue to remain tourist attractions. However, unplanned tourism in such landscapes can destroy the very environment that attracts such tourism in the first place. Hence, there is a need to move towards a model of tourism that is compatible with these fragile landscapes."

Another basic element of eco-tourism is to first understand the carrying capacity of a forest and understand how it can sustain tourists while having the lowest possible consumption of non-renewable resources, and to keep the magnitude of tourism to a minimum to ensure low environmental impact and better satisfaction for tourists. It is essential to understand the carrying capacity of a forest to ascertain how many tourists it can take without causing damage to the forest or wildlife. Unfortunately, eco-tourism in Kerala stands unregulated at the moment which has led to the eco-tourism sites being used as nothing but regular tourist spots which are not sustainable and are operating without understanding the carrying capacity of the forest. It is also submitted that tourism that benefits local residents but causes significant damage to forests and wildlife is not eco-

tourism and it is not within the Forest Department's mandate to allow destruction of forests to support local populace. It is pertinent to keep in mind that the key deciding factor for eco-tourism should be the damage it inflicts on the forests and wildlife, and benefit to local populace, if any, is an added advantage of the same. Allowing such unregulated tourism in the forests of Kerala under the garb of eco-tourism has several irreversible impacts, especially in terms of littering of these spaces, disturbance to wildlife, felling of trees for construction of infrastructure, etc.

8. It is respectfully submitted that it is now learnt that the Kerala Forest Department after having consultations with the field offices have finalized the "Guidelines for Eco Tourism in Forest and Wildlife Areas", which provide for management of existing eco-tourism sites. A true copy of the above Guidelines prepared by the Kerala Forest Department is produced herewith and marked as **Exhibit P5**.
9. That, the guidelines that were drafted by the Kerala Forest Department were made with an underlined effort to keep to the letter and spirit of the concept of eco-tourism, taking into consideration various factors such as first understanding the carrying capacity of various sites, detailed guidelines on completely doing away with the use of plastic at eco-tourism sites, involvement of Vana Samrakshana Samitis (VSS), which are the local Participatory Forest Management Institutions at the village level, consisting of locals to ensure maximum benefit to them, disallowing construction of any new infrastructure, impose mandatory requirement of statutory clearances for eco-tourism activities in forest areas and Protected Areas, provisions for waste and water management which keep the production of non-biodegradable materials to the minimum, etc. These Guidelines which were first proposed in 2017 and are a comprehensive guide to effectively managing eco-tourism sites by causing minimum impact on the forests and at the same time provide an enhanced and intimate experience for the visitors who will go home with some learning and will be better sensitized to environmental and wildlife issues. The Kerala Forest Department had forwarded the above guidelines to the 3<sup>rd</sup> respondent for approval. However, the petitioner has reason to believe that the Government has not approved the same, till date.
10. It is respectfully submitted that the petitioner has made several enquire as well as representations before the 3<sup>rd</sup> respondent regarding the effective and speedy implementation of the Exhibit P5 guidelines for the regulation of eco-tourism in the State of Kerala. However, it is now reliably learnt by the petitioner Exhibit P5

guidelines have been withdrawn by the 4<sup>th</sup> respondent. The petitioner has obtained a letter through RTI evidencing that all the directions issued from the Office of the Additional Principal Chief Conservator of Forests (E&TW) for the implementation of Exhibit P5 Guidelines stand withdrawn. What is pertinent to note is that this letter withdrawing the earlier guidelines do not state any reason for withdrawal of the Guidelines, thus indicating clear mala fide intentions of in doing so. A true photocopy of letter No. E&TW3-18256/16 dated 31.07.2018 issued from the office of the Additional Principal Chief Conservator of Forests (E&TW) is produced herewith and marked as **Exhibit P6**.

11. It is respectfully submitted by the petitioner issuance of Exhibit P6 will cause significant damage to forests and wildlife, which has been going on now for several years. Petitioner submits that presently in the absence of proper guidelines for regulating eco-tourism, several constructions of new infrastructure is coming up and thus causing destruction of the forests. More importantly, a significant chunk of the funds are being allotted and spent on construction of new infrastructure, which are not needed and also cause significant damage to the forests. As seen earlier, Rs 9.84 crores have already been spent on constructing permanent structures which are completely unnecessary and only cause destruction of fragile habitats. Implementation of Exhibit P5 guidelines would bring a permanent regulation to these activities as well as the fund which are being carelessly utilized for such infrastructures. It is therefore clear that Respondents No. 3 and 4 have withdrawn Exhibit P5 guidelines with mala fide intentions and with gross disregard to the forests and wildlife. Further, not clearly elucidating the various permissions required for operation of an eco-tourism site, allowing plastics in the eco-tourism sites with no stringent guidelines to prevent use of non-biodegradable materials, allowing opening of new eco-tourism sites which will also impact sites that are undisturbed are worrying. This is of great concern to the Petitioner-Society and it is therefore for this Hon'ble Court to intervene and ensure that the most effective guidelines which will truly aid in implementation of eco-tourism in its true sense are passed by the State of Kerala and the Forest Department, in keeping with their mandate to conserve Kerala's forests.

12. In addition, it is pertinent to note that it has come to the Applicant's knowledge that the 3<sup>rd</sup> Respondent has drafted fresh guidelines for regulation of eco-tourism, which are a dilution of Exhibit P5 and do not provide a mechanism to ensure that eco-tourism in Kerala is kept to the true sense of what it stands for. Many of the

environmental regulations in Exhibit P5 have been purposefully diluted or even deleted in the new draft guidelines without stating any scientific reasoning for the same. This is done with malafide intention so as to justify the illegal eco-tourism activities being done in the forest lands and to start new such illegal acts. The severity of this dilution is such that it will drastically impact the state of forests and wildlife in Kerala. A copy of the newly proposed guidelines are annexed herewith as **Exhibit P6(a)**.

13. In this context it is pertinent to note that as per the dictum laid down by this Hon'ble Court, "eco-tourism" is considered a non-forest activity and therefore requires Forest Clearance from 1<sup>st</sup> respondent prior to commencing such activities. However, majority of the eco-tourism projects have seldom taken Section 2 clearance under the Forest (Conservation) Act. Illegal construction of ticket houses, resting rooms, parking spaces, etc are being done in gross violation of the Forest (Conservation) Act, as can be seen in Exhibits P2 and P3. It is further submitted that as per the documents received under RTI vide Exhibit P4, it is seen that the Forest Department has undertaken significant construction under the garb of eco-tourism, despite a letter being issued to them on 25-07-2009 by the Government of India cautioning the State of Kerala not to undertake illegal constructions in the name of eco-tourism.

14. It is respectfully submitted that some of these projects that are functioning without Forest Clearance in the South Wayanad Forest Division include Pakkom-Kuruva, Banasuramala-Meenmutty, Chembra Peak, Meenmutty waterfall and Soochipara Waterfall. Although eco-tourism is part of the Working Plan for the South Wayanad Forest Division, Forest Clearance has not been granted for the aforementioned projects under Section 2 of the Forest (Conservation) Act, 1980, thus making them illegal. A true photocopy of the relevant portion of the Working Plan for South Wayanad Forest Division is annexed herewith as **Exhibit P7**. The 1<sup>st</sup> respondent had sent a letter to the 2<sup>nd</sup> respondent approving the Working Plan for the years 2012-13 to 2021-22. However, it is to be noted that a specific condition was laid down by the 1<sup>st</sup> respondent directing the 2<sup>nd</sup> respondent that prior Section 2 clearance has to be obtained for eco-tourism activities. A true photocopy of the letter from the MoEF&CC to the Government of Kerala dated 13.11.2012 is produced herewith and marked as **Exhibit P8**. Similarly, it is also seen in the case of the State of Himachal Pradesh, where they have passed their "Re-revised Policy on Development of Eco-Tourism in Himachal Pradesh". In the said policy, it states in unequivocal terms that prior Forest Clearance is

mandatory for eco-tourism projects. A true photocopy of the relevant pages of Himachal Pradesh's eco-tourism policy are annexed herewith as **Exhibit P9**. It is therefore clear without any doubt that eco-tourism activities on forest land require prior Forest Clearance under the Forest (Conservation) Act, 1980, and the structures constructed thus far are wholly illegal as the law does not provide for ex-post facto clearances. It is also mandatory for all eco-tourism sites and projects that are located inside Protected Areas to first obtain NOCs from the 5<sup>th</sup> Respondent and from the Standing Committee of the National Board for Wildlife. The dilution of existing guidelines was never discussed in the meeting of the 5<sup>th</sup> Respondent, as per the best knowledge of the petitioner. No impact study was done to that effect.

15. It is the submission of the petitioner that when such Guidelines have already been drafted by the Forest Department of Kerala, the legislative intent behind these Exhibit P5 guidelines is clear, making it even more apparent that such guidelines are the need of the hour. All that it lacks is for these guidelines to be formally issued and implemented, which is what the petitioner seeks from this Hon'ble Court. The 2<sup>nd</sup> respondent is dragging the implementation of Exhibit P5 guidelines for reasons best known to him. Exhibit P6 withdrawal letter does not state any reason as to why the same has been withdrawn.

Under these circumstances, left with no other efficacious or alternative remedy than to approach this Hon'ble court, for the redressal of grievances, the petitioner most humbly prefer this writ petition (civil) under Article 226 of the Constitution of India with following among other

#### **GROUND**

- A. The issuance of Exhibit P6 letter withdrawing the implementation of Exhibit P5 guidelines is improper, irregular, arbitrary and malafide in nature.
- B. It is to be noted that Exhibit P5 was prepared by the Department of Forest and Wildlife after taking into consideration various factors such as first understanding the carrying capacity of various sites, detailed guidelines on completely doing away with the use of plastic at eco-tourism sites, involvement of Vana Samrakshana Samitis (VSS), which are the local Participatory Forest Management Institutions at the village level, consisting of locals to ensure maximum benefit to them, disallowing construction of any

new infrastructure, provisions for waste and water management which keep the production of non-biodegradable materials to the minimum, etc. Implementation of Exhibit P5 guidelines will only do good for the

- C. Exhibit P5 guidelines are presently the need of the hour for regulating the mushrooming eco-tourism in the State of Kerala. By issuing Exhibit P6 withdrawal of the guidelines, the 2<sup>nd</sup> and 4<sup>th</sup> respondents have not only left a void in the regulation of eco-tourism projects but also permitted the ongoing illegalities to be perpetuated.
- D. The petitioner submits that there are no regulation with regard to the carrying capacity of the tourists to each eco-tourism sites in the State. No proper study has been done by the 4<sup>th</sup> respondent with this regard for the establishment and promotion of eco-tourism in the State. Though it is understood that a study is underway for four of the sixty eco-tourism sites, operation of these sites without conducting the study is causing irreparable damage to the forests and wildlife in Kerala.
- E. The 'Earth Summit' held in Rio, in 1992, established the Triple Principles of Environment, Economic and Social sustainability. Since then, the principles of sustainable tourism have been adopted by the tourism industry worldwide. In India, the tourism sector is based on exploiting its unique endowments of biodiversity, forests, rivers, and its rich culture and heritage. The challenges in this sector lie in successfully preserving these in their original form, and making them accessible to domestic and international travelers. Exhibit P5 guidelines would in fact help the Country fulfill the principles of sustainable tourism. Instead by issuing Exhibit P6 is against the letter and spirit of the Triple Principles of Environment, Economic and Social sustainability laid down in the Earth Summit, 1992, wherein India was a signatory.
- F. As per the dictum laid down by this Hon'ble Court in State of Kerala & Ors v. New World Investments (P) Ltd. & Ors in W.A. No 89 of 2011, it was held by this Hon'ble Court tourism is a non-forest activity, thus requiring prior Forest Clearance. In such circumstances, the eco-tourism activities carried out in the State of Kerala without prior forest clearance is per se illegal and Exhibit P5 guidelines brings strict regulation to such activities. Therefore, all non-forest

activities without prior forest clearance ought to be stopped and strict implementation of Exhibit P5 guidelines has to be done.

- G. It is to be noted that Section 3 of the Environment (Protection) Act, 1986 confers a power coupled with duty on the respondents herein to take necessary steps to protect and safeguard the environment. The respondents herein are duty bound to ensure that Exhibit P5 guidelines are implemented at the earliest rather than permitting eco-tourism activities to be carried out unregulated putting the environment, ecology and wildlife at stake.
- H. The provisions of the Environment (Protection) Act, 1986 only provides power to the respondents herein to impose restrict or prohibit or regulate certain activities which are detrimental to the environment. In the present case, the 4<sup>th</sup> respondent has gone ahead and issued Exhibit P6 letter withdrawing all the regulations and guidelines laid down in Exhibit P5, thereby relaxing the laws for smooth running of the illegal eco-tourism activities.
- I. Exhibit P5 guidelines have been issued by the Forest Department as part of the various environment laws and laws pertaining to protection of wildlife, which are welfare legislations which should be liberally construed in favour of the weak and infirm and the Courts have a binding duty should ensure that the benefits conferred by Exhibit P5 should not be defeated by the delay in administrative delay or incompetence. Exhibit P6 issued by the 4<sup>th</sup> respondent clearly defeats the very purpose for which Exhibit P5 guidelines have been issued and thus is liable to be set aside as observed in the case of Animal Welfare Board of India Vs A Nagaraja & Ors reported in 2014 KHC 4347.
- J. A mere perusal of Exhibits P7 and P8 would reveal that several project sites in the State are operating in such similar manner without obtaining prior forest clearance or other necessary clearances from the statutory bodies concerned, thus posing huge threat to the environment at large.
- K. It is to be noted that several States like Himachal Pradesh have taken steps for the implementation of guidelines for regulation eco-tourism in their respective States. Exhibit P9 would clearly show that in the State of Himachal Pradesh,

eco-tourism will be permitted only after getting the mandatory forest clearance under the FC Act from the Central Government. Similarly, the case is also applicable in the State of Kerala and the 3<sup>rd</sup> and 4<sup>th</sup> respondents are duty bound to implement Exhibit P5 guidelines and insist for forest clearances for the projects mentioned in Exhibit P1.

- L. The principle of non-regression is understood as the requirement that norms which have already been adopted by states may not be revised in ways which would imply going backwards on the previous standard of protection. This principle has been traditionally recognized in the area of human rights – that is, once a human right is recognised it cannot be restrained, destroyed or repealed. This theme is echoed in almost all the major international instruments on human rights, including the Universal Declaration of Human Rights. Environmental rights are closely related to human rights as well, including cultural and social rights, and can be interpreted to apply in the context of environmental protection as well. In addition, the principle is increasingly being invoked in the context of environmental protection. The European Union has adopted this view through a resolution:

*97. Calls for the recognition of the principle of non-regression in the context of environmental protection as well as fundamental rights.*

The Resolution of the UN General Assembly as the outcome document of the Rio+20 United Nations Conference on Sustainable Development reflects the acceptance of this principle as well :

We acknowledge that since 1992 there have been areas of insufficient progress and setbacks in the integration of the three dimensions of sustainable development, aggravated by multiple financial, economic, food and energy crises, which have threatened the ability of all countries, in particular developing countries, to achieve sustainable development. In this regard, it is critical that we do not backtrack from our commitment to the outcome of the United Nations Conference on Environment and Development. We also recognize that one of the current major challenges for all countries, particularly for developing countries, is the impact from the multiple crises affecting the world today.

Therefore, the principle of non-regression applies as a human and fundamental right, as well as under the principles of environmental law – like

“sustainable development” and precautionary principle”. Issuance of Exhibit P6 and P6(a) by diluting the environmental norms accepted through Exhibit P5 is against the Principle of Non-regression, therefore are illegal and liable to be set aside.

M. Exhibit P6(a) is issued with malafide intention to continue the illegal tourism activities within the forest lands in violation of the Forest (Conservation) Act, 1980 and Wildlife (Protection) Act. Diluting the accepted environmental regulations without any scientific reasoning is arbitrary and therefore illegal. Thus, it has to be set aside.

N. Each days delay on the part of the respondents in not implementing Exhibit P5 guidelines-is causing irreparable damage and loss to the environment at large. Hence, the urgent intervention of this Hon'ble Court by invoking the wide powers under Article 226 of the Constitution of India is highly inevitable in this case, unless irreparable injuries and hardship may be caused to the petitioner.

Having regard to the above mentioned grounds and also such other grounds that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble court may be pleased to:

#### **PRAYERS**

- (i) Declare that the Respondents No.1 to 4 has no power or authority to dilute Exhibit P5 guidelines.
- (ii) Call for the records leading to Exhibit P6, P6(a) and Issue a writ of certiorari or any other appropriate writ quashing Exhibit P6 and P6(a).
- (iii) Issue a writ of mandamus or any other appropriate writ directing 3<sup>rd</sup> respondent to strictly implement Exhibit P5 guidelines.

(iv) Issue a writ of mandamus or any other appropriate writ directing the 1<sup>st</sup> and 3<sup>rd</sup> respondent to ensure that no eco-tourism activities are carried out in the forest land within the State of Kerala without obtaining prior clearance from the Central Government as mandated under the Forest (Conservation) Act, 1980.

(v) Pass such any other order, direction or reliefs as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

**INTERIM RELIEF SOUGHT FOR:**

For the reasons stated in the memorandum of writ petition (civil) and its accompanying affidavit it is most humbly requested and prayed that this Hon'ble court may be pleased to

- 1) Stay the operation of Exhibit P6 and P6(a)
- 2) direct the Respondents 2 to 4 to strictly implement Exhibit P5,  
without any further delay, pending final disposal of this writ petition (civil).

Dated this the 31<sup>st</sup> day of January, 2019

PETITIONER

COUNSEL FOR THE PETITIONER

**BEFORE THE HON'BLE HIGH COURT OF KERALA**

W.P (C) No.

of 2019

WAYANAD PRAKRITHI SAMRAKSHANA  
SAMITHI

: PETITIONER

*Versus*

UNION OF INDIA & ORS

: RESPONDENTS

**AFFIDAVIT**

I, N.Badusha, S/o. Khansa, Nayketti, P.O., Sulthan Bathery Taluk, Wayanad, Kerala - 673 592, do hereby solemnly affirm and state as follows:

- 16.I am the President of the petitioner Samithi in the above writ petition (civil). I know the facts of the case and I am competent to swear this affidavit.
- 17.The exhibits produced the writ petition (civil) are the true copies of the original documents.
- 18.That, I have no private or personal interest in the subject matter of this case.
- 19.That, there is no authoritative pronouncement by the Hon'ble Supreme Court or the High Court on the question raised and the result of the litigation shall not lead to any undue gain to myself or to anyone associated with me.
- 20.That, I have not filed earlier writ petition (civil) seeking similar reliefs in respect of the subject matter of this case.

All the above stated facts have been explained to me in Malayalam and are true to the best of my knowledge, information and belief.

Dated this the 31<sup>st</sup> day of January, 2019

DEPONENT

Solemnly affirmed and signed by the deponent before me this the 31<sup>st</sup> day of January, 2019, in my office at Ernakulam.

ADVOCATE

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

(Original Special Jurisdiction)

**W.P. (c) No. 35064 of 2018**

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

State of Kerala and others : Respondents

**SYNOPSIS**

It is submitted that this writ petition is filed in public interest to protect the forest and the ecology. The Government of India framed Ext P1 Guidelines for Ecotourism in and around Protected Areas. Under Ext. P1, the State Government is required to frame State Level Ecotourism Strategy in tune with the frame work provided therein before 31.12.2011 (2.1). The State Government has not framed the State Level Ecotourism Strategy, till date, hence, a direction is sought in the matter.

Ecotourism activity is essentially a non-forest activity requiring prior approval of the Government of India. The Ecotourism activity under Ext. P6 working plan of the South Wayanad Forest Division has no approval under Section 2 of the Forest (Conservation) Act, as evidenced by Ext. P7 letter of the Government of India. Hence a direction is sought to prohibit Ecotourism activity in the 60 ecotourism sites, including South Wayanad Forest Division under the Kerala Forest Department, where ecotourism is conducted without obtaining prior approval under the Forest (Conservation) Act, 1980.

Carrying capacity studies over the 60 Ecotourism sites are not conducted. Uncontrolled ecotourism activity, without conducting carrying capacity study adversely affects the flora and fauna as well

as the people in the locality. Carrying capacity study of the ecotourism destinations is mandated under Ext. P1 and is essential to protect the natural resources as well as local community and visitor satisfaction. Hence, a direction is sought to conduct carrying capacity study over the 60 Ecotourism sites under the Kerala Forest Department.

It is submitted that Ext. P10 and P11 are issued in violation of Section 2 of the Forest (Conservation) Act, 1980. It also adversely affects the ecology of the area and the local Tribal people, who depend on the forest for their livelihood. Ext. P10 and P11 are sought to be quashed. Hence this writ petition.

Dated this the 21<sup>st</sup> day of October, 2018

Counsel for the petitioner

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

(Original Special Jurisdiction)

**W.P.(c) No. of 2018****Petitioners**

Wayanad Prakrithi Samrakshana Samithi,  
Represented its President N.Badusha, S/o. Khansa,  
Nayketti, P.O., Sulthan Bathery P.O.,  
Wayanad, Kerala 673 592.

Vs.

**Respondents**

1. State of Kerala represented by the  
Chief Secretary to the Government,  
Secretariat, Thiruvananthapuram 695 001.
2. Additional Chief Secretary to the Government,  
Forest and Wildlife Department, Secretariat,  
Thiruvananthapuram 695 001.
3. Principal Chief Conservator of Forest and Head of Forest Forces,  
Forest Head Quarters, Vazhuthacaud,  
Thiruvananthapuram. 695 014.
4. Divisional Forest Officer,  
South Wayanad Forest Division,  
Kalpetta, Wayanad 673121.
5. District Collector and the Chairman of District Tourism  
Promotion Council, Wayanad.
6. Union of India represented by its Secretary,  
Ministry of Environment, Forest and Climate Change,  
Prayvaran Bhavan, Lodhi Road, New Delhi 110 003.

The address for service of all processes and notices on the  
petitioners is that their counsel Prakash.M.P. (P165), Market Road

North End, Ernakulam 682 018 and that of the respondents is as shown above.

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226  
OF THE CONSTITUTION OF INDIA**

STATEMENT OF FACTS

The petitioner above named respectfully submits:

1. It is submitted that the petitioner is a registered voluntary organization working in the field of environmental conservation. The above Society came into being in the nineteen-seventies as a peoples' reaction to large scale elephant poaching and sandalwood smuggling in Wayanad and adjacent Karnataka and Tamil Nadu forests. Later, it succeeded in preventing clear felling of forests in the catchment area of Kabani, a tributary of Cauvery River by Chipko-model agitation. Other landmark achievements in the history of the Society are (i) prevention of planting exotic tree species in the high altitude grasslands of Brahmagiri, Banasura and Chelembra peaks, (ii) stoppage of illegal quarrying and mining of sand in many places in Wayanad, (iii) saving unique island forest of Kuruva in Kabani river from ill-advised social forestry scheme, (iv) protection of pre-historic monument of Edakkal caves from wanton destruction by tourists. Even though the State Archeology Department notified Edakkal Cave as a protected monument, it did nothing for its safety. It was the above Society which erected an iron gate at the entrance of the cave and kept it under lock and key for years. When the Government appointed a Custodian, the Society handed over the keys, (v) protection of forest fires. For the first time in Kerala, the Society started a campaign to prevent forest fire, forcing Government to take action in this regard (vi) Night traffic ban in National Highway 212 passing through Bandhipur National Park and Wayanad Wildlife Sanctuary. It is submitted that the above Society is registered under the Society's Registration Act, 1860 and it's Registration Number is 293/2003.

2. It is submitted that this writ petition is filed in public interest to protect the environment, forest and bio diversity. This writ petition is also filed to protect the rights of scheduled tribe and traditional forest dwellers, who cannot come to this Hon'ble Court for their redressal.
3. It is submitted to Kerala is one of the most sought-after tourist destination in the world for its scenic beauty and cultural richness. The stunning sand beaches, palm fringed backwaters, moderate climate, mist clad hill stations, tropical forest, abundant wildlife, diverse art forms and festivals give Kerala a certain charm in traveler's eyes. The strength of tourism in Kerala fully depends on its natural attributes like forest, hill stations, backwaters and beaches. Hence it is essential to bring forth sustainable initiatives towards conservation without inhibiting tourism activities.
4. It is submitted that the Kerala Forest Department has 60 Eco tourism destinations, covering most of the biologically and ecologically significant regions, in the State. It is submitted that eco tourism is a globally recognised initiative for its minimum impacts to the environment, ecosystem services, and livelihood enrichment of local people and eco tourism operators. The International ecotourism Society defines ecotourism as the responsible travel to the natural areas that conserves the environment and sustains the well-being of local people. **Its contribution towards economic, social and cultural development of the local communities by supporting and conserving area of natural beauty has been widely noted.** In a nutshell eco tourism is a tourism program that is nature-based, ecologically sustainable, where education and interpretation is a major constituent and where local people are benefited.
5. It is submitted that studies carried out establishes that **carrying capacity** is the number of the people a tourism destination can support without degrading ecological, social, cultural and economic

attributes for the present and future generations. When the carrying capacity reduces, the eco system will loosen its ability to support the population that originally resided in the region in a sustainable manner. Also, the decline in carrying capacity leads to reduced satisfaction level among the tourist. As the geographical, ecological, demographic, socio-cultural and economic characteristics of each destination vary, there is no universal way to study the carrying capacity of eco tourism destinations.

6. It is submitted that Kerala Forest Department's effort in establishing 60 eco tourism sites across Kerala has not achieved the required conservation bio diversity and eco system, and sustainable development of local community, which are central theme of eco tourism. Due to special interests of the private players in tourism industry, these locations have been well advised and hence receive a lot of tourism attraction. However, so far no serious studies have been carried out in determining the carrying capacity of these eco tourism destinations. Therefore, carrying capacity study of the ecotourism destinations is essential to protect the natural resources as well as local community and visitor satisfaction.
  
7. It is submitted that most wilderness areas across India are fragile ecosystem that provide a whole host of ecosystem services to local residents and people living downstream and continue to remain important tourist attractions. However, unplanned tourism in such landscape can destroy the very environment that attracts such tourism. Hence, there is a need to move toward a model tourism that is compatible with these fragile landscapes. It is submitted that the Ministry of Environment, Forest and Climate Change, Government of India (hereinafter referred to as the MoEF for brevity) prepared a Draft Guidelines for ECO Tourism in and around Protected Areas, 2011. It is submitted that in the above guidelines, the Government of India requested all States to notify State-level Eco Tourism Strategy by December 31, 2011 and put the same in the public domain, in the local language also. It was also pointed

out at 2.1.5 that the State Forest Department should be the arbiter in case of any dispute regarding the ecologically advisability of any tourism plans, whether Protected Area Management, private entity, temple board or community, as the welfare of wildlife and protected areas/biodiversity takes precedence over tourism. It is also mandated that a site-specific ecotourism plan for each protected area must be prepared and approved by the State Government by December 31, 2011 and put in the public domain in the local language also. It was also mandated that the Chief Wildlife Warden of the State shall develop a monitoring mechanism, estimate carrying capacity, delineate tourism zones, and decide the area open to tourism on the basis of objective, scientific criteria. A State-Level Steering Committee is required to be constituted under the Chairmanship of the Chief Minister for quarterly review vis-à-vis the recommendation contained in the State-Level Eco Tourism Strategy. The Chief Wildlife Warden of the State shall be the Member Convenor of the said Committee. It was stipulated in the above guidelines that the State Government will decide its composition and rules of procedure. It was directed that each State should constitute State-Level Steering Committee by December 31, 2011 and the names of its members should be put in the public domain. It is also mandated that that as part of the State-Level Eco Tourism Strategy, the State Government should levy a 'local conservation cess' as a percentage of turnover, on all privately run tourist facilities within 5 km of the boundary of a protected area. It was also ordered that each State Government should notify the local conservation cess by December 31, 2011. Further, a Local Advisory Committee is required to be constituted for each protected area by the State Government and the Constitution was the provided in the guidelines for eco tourism in and around protected areas. It is submitted that the above guidelines though named as draft, makes it obligatory on the part of the State Government to prepare guidelines in tune with it for eco tourism in forest and wildlife areas. A true copy of the Guidelines for Eco Tourism in and

around Protected Areas published in June 2011 by the Ministry of Environment and Forest is produced here with an marked as **Exhibit-P 1.**

8. As stated above, the Forest Department operates 60 eco tourism sites in the State. A list of the ecotourism sites in Kerala under the control of the Forest Department is produced here with and marked as **Exhibit-P2.**
9. It is submitted that the State Forest Development Agency, Kerala (FDA for short), which is constituted based on the directions of the MoEF under the National Afforestation Programme (NAP for short), in its meeting held on 20.01.2017 decided to review Eco Tourism Projects and evaluate the existing eco tourism sites. The FDA also decided to grant a consultancy for conducting carrying capacity studies in each and every eco tourism sites and decided to invite expression of interest. It is submitted that the 12<sup>th</sup> Executive Committee Meeting of the State Forest Development Agency was held on 07.06.2017 and decided to shortlist 3 firms to conduct carrying capacity of the ecotourism areas. A true copy of the Minutes of the above meeting is produced herewith and marked as **Exhibit P3.**
10. It is submitted the Kerala Forest Department after having consultation with the field offices have finalised the Guidelines for Eco Tourism in Forest and Wildlife Areas, which provide for management of existing eco tourism sites. It stipulates that visitation should be allowed only as per carrying capacity studies or calculation of carrying capacity as per formula given in approved National Tiger Conservation Agency (NTCA) Guidelines issued by the Government of India for Eco tourism. It also provide for Ecosystem Management Fund Guidelines providing for procedure for transfer fund, ticketing provisions infrastructure, signage, provisions for refreshment, water and waste management, et cetera. To put it differently, the Guidelines prepared by the Kerala

Forest Department is an operational guideline for Ecotourism activity in forest and wildlife areas. A true copy of the above Guidelines prepared by the Kerala Forest Department is produced herewith and marked as **Exhibit P4**. The Kerala Forest Department has forwarded the above guidelines to the 2<sup>nd</sup> respondent for approval. However, the petitioner has reason to believe that the Government have not approved the same. It is submitted that he Additional Principal Chief Conservator of Forests as per letter dated 21.10.2017 requested the 2<sup>nd</sup> respondent to grant administrative sanction for conducting carrying capacity studies and also permission to utilize eco tourism plan fund. A true copy of the above letter dated 21.10.2017 is produced herewith and marked as **Exhibit P5**. To the knowledge of the petitioner, no administrative sanction is given by the respondents 1 and 2, till date.

11. It is submitted that the eco tourism is a non forest activity and cannot be carried on over a forest area, without getting prior clearance under Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as the FC Act for brevity). It is submitted that as per the National Forest Policy, 1988 and the Forest (Conservation) Rules, 1980, working plan of each Forest Division has to be got approved by the MoEF. In other words, only those forestry activity detailed in the Working Plan and approved by the MoEF can only be carried on in the Forest areas. Since, the MoEF has prescribed guidelines for ecotourism in Protective Areas as per Ext. P1, the Working Plans of the various Forest Division should satisfy the stipulations in Ext. P1.
12. To the knowledge of the petitioner the eco tourism activity in most of the Forest Divisions are carried without the 'prior approval' from the MoEF. For example there are 5 eco tourism sites in South Wayanad division, they are Pakkom-Kuruva, Banasuramala-Meenmutty, Chembra Peak, Meenmutty waterfall and Soochipara Waterfall. It is submitted that ecotourism activity is included in the working plan of South Wayanad Forest Division, the same has not

been approved by the Government of India under section 2 of the FC Act. A true copy of the relevant portion of the working plan of the South Wayanad Forest Division is produced herewith and marked as **Exhibit-P6**. It is submitted that MoEF as per letter dated 13.11.2012 addressed to the Principal Secretary to the Government of Kerala conveyed its approval to the working plan of South Wayanad Forest Division for the period from 2012-13 to 2021-22 under section 2 of Forest conservation act **except the chapter in eco tourism**. A true copy of the above letter dated 13.11.2012 of the MoEF is produced herewith and marked as **Exhibit P7**. In other words the activities carried on at the 5 eco tourism centers mentioned in Ext. P6, are clearly in violation of section 2 of Forest Conservation Act 1980.

13. It is submitted that in Exhibit-P 5 letter, it is stated that no carrying capacity studies have been carried out in the 60 ecotourism sites. It is submitted that the 5 ecotourism sites in Ext. P6 are in reserve forest area and the Forest Department alone is competent to carry out ecotourism in reserved forest area. It is submitted that Kuruva Island is a reserved Forest area under the South Wayanad Forest Division. The eco tourism activity in South Wayanad Division is not approved by the Ministry of Environment and Forests. It is submitted that the eco tourism activity under the South Wayanad Forest Division, including the one at Kuruva Island is clearly illegal.
14. It is submitted that more than 2000 tourists visit the critical habitat in Kuruva Island and there is unregulated tourism. The Kuruva Island is critical biodiversity hotspot, containing endangered flora and fauna. In Northern area of Kuruva Island, eco tourism is conducted by the District Tourism Promotion Council (DTPC for short) and the other by the Forest Department. Under DTPC, no forest fringe dwellers belonging to scheduled tribe or traditional forest dwellers are engaged for ecotourism, whereas, scheduled tribe community alone manages the ecotourism activity under the

forest department. During monsoon season, ecotourism under the forest department is temporarily discontinued; however, DTPC conducts ecotourism even during monsoon. It is submitted that the District Tourism Promotion Council has no authority to conduct tourism in reserved forest areas. The activity carried on by the DTPC is in violation of Forest (Conservation) Act, 1980 and at any rate it deprives a livelihood to the forest fringe dwellers belonging to schedule tribe and schedule caste community. It is also submitted that DTPC is not under the control of the Forest Department. The DTPC operates tourism in reserved forest area destroying ecosystem. Therefore it is only just and necessary that this Hon'ble Court may be pleased to issue a direction restraining the 6<sup>th</sup> respondent, who is the Chairman of the DTPC from ecotourism activity carried on by the District Tourism Promotion Council at Kuruva Island and surrounding areas.

15. It is submitted that Kuruva Island is a reserve forest notified under the Madras Forest Act in 1895. Later, the description of the limits was corrected by a notification in 1938. The reserve comprises of an area of 367 acres. It is further submitted that the Kuruva Island is one of the most crucial wildlife corridors and it falls in the middle of an age-old traditional migratory path of the Asian elephants, which migrate from Southeast-Wayanad-Mudumalai-Bandipur complex to North-East towards the Brahmagiri-Nagarhole-Kottiyoor forest Complex. The islets form an important stretch where wild fauna migrate through a narrow stretch between larger landscapes. Even the slightest disturbance to the area will result in a ecological disaster. The above facts are revealed from the Report of the Study conducted by Dr. Sathis Chandran Nair on Ecology of Kuruva Island Reserve Forest, a true copy of which is produced herewith and marked as **Exhibit P8**. Few photographs showing the endangered species and the habitat are produced herewith and marked as **Exhibit P8 (a) Series**.

16. It is submitted that considering the ecological importance of Kuruva Island the President of the petitioner society made a request to the authorities to ban the entry of tourists to the Kuruva Island and surrounding areas. It was also requested that a scientific study by reputed scientific institutions be ordered to be conducted on the endemic species of flora and fauna and the migratory routes. A true copy of the above representation of the President of the petitioner is produced with an marked as **Exhibit P 9.**
  
17. It is submitted the Additional Principal Chief conservator of Forests by order dated 07.05.2018 decided to allow 950 persons per day temporarily, till a scientific study of carrying capacity which is already been initiated is completed. A true copy of the above letter dated 07.05.2018 his produced the marked as **Exhibit-P 10.** It is submitted that the 2<sup>nd</sup> respondent based on extraneous considerations, as per letter dated 11.05.2018 (wrongly mentioned as 11.08.2018) addressed to the District Collector allowed the Divisional Forest Officer to increase the entry of visitors, if necessary, subject to local factors, up to an additional 100 persons a day. A copy of the above letter dated 11.05.2018 is produced herewith and marked as **Exhibit-P 11.** It is submitted that Ext. P10 and P11 are clearly issued without considering the bio diversity, the carrying capacity of the site and also in violation of Section 2 of the FC Act. It also neglected the dependant tribal community, whose support is very vital for conservation. The ecotourism in forest area is impermissible without getting prior approval from the MoEF. Therefore, Ext. P10 and P11 are illegal and are liable to be quashed.
  
18. It is submitted that eco tourism activity is permissible only in 'protected areas', which is defined under Section 2(24A) of the Wildlife (Protection) Act, 1972 to mean a National Park, a sanctuary, a conservation reserve or community reserve as notified under Sections 18, 35, 36A and 36C of the said Act. Therefore, no eco tourism activity is permissible in a reserve forest. Since

ecotourism generates income to the forest dependent communities, especially the schedule tribe and traditional forest dwellers community, the petitioner is not opposing the eco tourism in reserve forest area. However, it is submitted that ecotourism can only be done under participatory forest management, that too after obtaining prior approval under Section 2 of the Forest (Conservation) Act, 1980. Therefore, it is just and necessary to issue a direction restraining the State Government from carrying on ecotourism in reserve forest, without getting prior approval under Section 2 of the Forest (Conservation) Act, 1980 and engaging persons other than forest dependent communities.

19. In the above facts and circumstances, it is become necessary to seek appropriate directions to the respondents not to carry on with ecotourism in forest area without conducting carrying capacity and also getting prior approval from the MoEF under Section 2 of the Forest (Conservation) Act, 1980. The petitioner has no other efficacious and alternate remedy than to approach this Hon'ble Court to get their grievances redressed on the following among other:

#### **GROUNDS**

- (A) Ext. P10 and P11 are arbitrary, unreasonable, illegal, unauthorised and are liable to be quashed.
- (B) The 6<sup>th</sup> respondent has framed Ext. P1 Guidelines and directed under clause 2.1.1 that the State Government shall develop a State Level Ecotourism Strategy, under clause 2.1.2 that the State Level Ecotourism Strategy must be in tune with the frame work of the Guidelines provided and that the State Level Ecotourism Strategy shall be notified before 31.12.2011. However, the 1<sup>st</sup> respondent has not notified the State Level Ecotourism Strategy till date. The directions contained in Ext. P1 can be termed as mandatory, as forest falls under the concurrent list to the 7<sup>th</sup> schedule to the Constitution. In Ext. P1, the 6<sup>th</sup> respondent felt the need to frame

Ecotourism Guidelines, especially, it felt that the mushrooming of facilities around the protected area has led to exploitation, disturbances and misuse of fragile ecosystem. Therefore, in order to protect the ecology, the respondents 1 and 2 are liable to be compelled to notify its Ecotourism Strategy in tune with Ext. P1, within a time frame that may be fixed by this Hon'ble Court.

- (C) Section 2 of the Forest (Conservation) Act, 1980 prohibits use of forest land for non forest purpose. The Rules made under the FC Act and Clause 4.3.2 of the National Forest Policy, 1988, which has been held to be statutory by the Apex Court in the judgment in Lafarge Umaiam Mining (P) Ltd Vs. Union of India, provides that no forest should be permitted to be worked without the Government having approved the management/working plan. Ext. P6 and P7 would reveal that the chapter relating to ecotourism in Ext. P6 has not been approved by the Government of India under the provisions of the FC Act. Therefore, the directions contained in Ext. P10 and P11 allowing ecotourism activity in Kuruva Island, which is an ecotourism site coming under the jurisdiction of the 4<sup>th</sup> respondent and included in Ext. P6, is clearly illegal and unauthorised. Hence, Ext. P10 and P11 are liable to be quashed.
- (D) As stated above, ecotourism is a non forest activity and such activity is impermissible within forest area without getting prior approval of the management/working plan by the Government of India under Section 2 of the Forest (Conservation) Act, 1980. Therefore, the respondents are liable to be compelled not to carry on ecotourism activity over the area under the management of the Kerala Forest Department, without getting prior approval of the respective management/working plan under Section 2 of the Forest (Conservation) Act, 1980. It is also necessary to restrain the respondents from engaging persons other than forest dependent communities for ecotourism activity in and around forest areas.
- (E) Clause 8 of Ext. P4 Guidelines prepared by the State Forest Development Agency specifies the term "Carrying capacity" as the maximum number of people that may visit a tourist destination at

the same time, without causing destruction of the physical, economic, socio-cultural environment and an unacceptable decrease in the quality of visitors' satisfaction". Clause 2.2.1 (ii) of Ext. P1 mandates to conduct carrying capacity study of the Protected Area, at three physical levels; physical, real and effective/permissible carrying capacity of visitors and vehicles, in terms of Annexure II therein. Ext. P3 and P5 would reveal that no carrying capacity study has been conducted in the 60 ecotourism sites. Need to conduct carrying capacity study has been realised and understood by the respondents. Therefore, it is just and necessary that the respondents are liable to be compelled to conduct carrying capacity study over the 60 ecotourism sites under the Kerala Forest Department, by engaging reputed agencies, with in a time frame that may be fixed by this Hon'ble Court.

- (F) As stated above, Ext. P10 and P11 are issued in violation of the provision contained in Section 2 of the Forest (Conservation) Act, 1980 and the same are liable to be quashed. Ext. P10 and P11 would have an adverse impact over the ecology and the tribal community, therefore, the above orders/directions are liable to be stayed, during the pendency of the above writ petition. It is also necessary to issue an interim order prohibiting the ecotourism activity in forest areas, under the South Wayanad Forest Division, for want of prior approval under the Forest (Conservation) Act, 1980.

For these and other reasons to be submitted at the time of hearing it is humbly prayed that this Hon'ble Court may be pleased to grant the following;

**Reliefs**

- (i) Issue a writ in the nature of a mandamus or other writ, direction or order commanding the 1<sup>st</sup> respondent to frame State Level Ecotourism Strategy in terms of Ext. P1 Guidelines issued by the Government of India, within a time frame that may be fixed by this Hon'ble Court;

- (ii) To call for the records leading to Ext. P10 and P11 and quash the same by issuance of a writ of certiorari or any other appropriate writ, direction or order;
- (iii) Issue a writ in the nature of a mandamus or other writ, direction or order restraining the State Government from carrying on ecotourism in reserve forest, without getting prior approval of the management / working plan under Section 2 of the Forest (Conservation) Act, 1980 and engaging persons other than forest dependent communities;
- (iv) Issue a writ in the nature of a mandamus or other writ, direction or order commanding the respondents to conduct carrying capacity study over 60 Ecotourism sites by engaging reputed agencies, within a time frame that may be fixed by this Hon'ble Court;
- (v) To issue such other writ, direction or order which this Hon'ble Court may deem just and proper in the facts and circumstances of the case and
- (vi) To award compensatory cost to the petitioner.

**Interim relief**

For the reasons stated in the writ petition it is humbly prayed that this Hon'ble Court may be pleased to issue an interim order staying the operation and implementation of Ext. P10 and P11 and also to prohibit Ecotourism under the South Wayanad Forest Division, for want of prior approval under the Forest (Conservation) Act, 1980, during the pendency of the above writ petition.

Dated this the 21<sup>st</sup> day of October 2018.

Counsel for the petitioner

Petitioner



myself or to the petitioner Society. It is submitted that the ecotourism activity affect the flora and fauna and causes environmental problems affecting the lives of many. Unless, the main prayer and the interim relief are allowed larger public interest will be put to jeopardy.

All the facts stated above are true and correct to the best of my knowledge belief and information.

Dated this the 21<sup>st</sup> day of October, 2018

**Deponent**

Solemnly affirmed and signed before me by the deponent who is personally known to me, on this the 21<sup>st</sup> day of October, 2018, in my office, at Ernakulam.

**Prakash.M.P; Advocate**



12	<b>Exhibit-P-8 (a):-</b> Photographs showing the endangered species and the habitat	
13	<b>Exhibit-P-9:-</b> True copy of the Study Report dated 25.05.2018 of D. Sathis Chandra	
14	<b>Exhibit-P-10:-</b> True copy of the order dated 07.05.2018 of the Additional Principal Chief Conservator of Forest.	
15	<b>Exhibit-P-11:-</b> True copy of the letter dated 11.05.2018 (wrongly shown as 11.08.2018) 21.10.2017 of the Principal Secretary to the Government	

Dated this the 21<sup>st</sup> day of October, 2018

COUNSEL FOR THE PETITIONER

*Presented on:- 26.10 .2018*

*Sub: - **PIL** Seeking to Conduct carrying capacity study of Ecotourism sites under the Kerala Forest Department-Prohibit Ecotourism without getting prior approval u/s 2 of the Forest (Conservation) Act, 1980.*

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

(Original Special Jurisdiction)

**W.P. (c) No. 35064 of 2018**

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

State of Kerala and others : Respondents

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226  
OF THE CONSTITUTION OF INDIA**

=====  
**PRAKASH.M.P (P 165)**

Counsel for the Petitioner  
=====

**APPENDIX****Petitioner's Exhibits:**

1. **Exhibit-P-1**:- True photocopy of the Guidelines for Ecotourism in and around Protected areas issued by the Government of India.
2. **Exhibit-P-2**:- A list of 60 ecotourism sites under the Kerala Forest Department
3. **Exhibit-P-3**:- True copy of the Minutes of the 12<sup>th</sup> Meeting of the State Forest Development Agency dated 07.06.2017.
4. **Exhibit-P-4**:- True copy of the Ecotourism Guidelines prepared by the State Forest Development Agency
5. **Exhibit-P-5**:- True copy of the letter dated 21.10.2017 of the Additional Principal Chief Conservator of Forest.
6. **Exhibit-P-6**:- True copy of the relevant portion of the Working Plan of the South Wayanad Forest Division.
7. **Exhibit-P-7**:- True copy of the letter dated 13.11.2012 of the MoEF
8. **Exhibit-P-8**:- True copy of the representation submitted by the President of the petitioner
9. **Exhibit-P-8 (a)**:- Photographs showing the endangered species and the habitat
10. **Exhibit-P-9**:- True copy of the Study Report dated 25.05.2018 of D. Sathis Chandra
11. **Exhibit-P-10**:- True copy of the order dated 07.05.2018 of the Additional Principal Chief Conservator of Forest
12. **Exhibit-P-11**:- True copy of the letter dated 11.05.2018 (wrongly shown as 11.08.2018) 21.10.2017 of the Principal Secretary to the Government.